IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/04/2004

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THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.19258 of 2003
and Writ Petition No. 22123 of 2003

Sakkimangalam Ellampallam Vaaikkal
Paasana Vivasayigal Sangam
rep. by its President A.Kamardeen
Sakkimangalam Petitioner in
Madurai North, Madurai District. .. both W.Ps.

-Vs-

The District Collector
Madurai District
Madurai.

The Executive Engineer Respondents 1&2
Public Works Department (RCD) in W.P.19258/03
Periyar Main Canal Division & Respondents
Melur Taluk, Madurai District. .. in W.P.22123/03

M. Tamilselvi .. 3rd Respondent
in W.P.19258/03

Petitions under Article 226 of the Constitution of India praying for a writ of Certiorari and a writ of Certiorarified Mandamus respectively, as stated therein.

!For Petitioner : Mr.K. Ramakrishna Reddy

^For Respondents 1&2
in W.P.19258/03 &
Respondents in W.P.
22123/03 : Mr.M.S. Palanisamy, AGP

For Respondent-3 in
W.P.19258/03 : Mr.B.S. Gnanadesikan

:O R D E R

Both these writ petitions were filed by the same petitioner.

2. While W.P.No.22123 of 2003 is preferred against the proceedings of the second respondent dated 9.5.2003 refusing to grant permission to the petitioner Sangam for removing gravel from kanmoi comprised in S.No.89/1, Sakkimangalam Village, Madurai North Taluk, Madurai District, W.P.No.19258 of 2003 is directed against the grant of permission for removal of gravel in favour of the third respondent.

3. For the purpose of convenience, parties are referred to as per their rank in W.P.No.19258 of 2003.

4. Mr. Ramakrishna Reddy, learned counsel appearing for the petitioner, invited my attention to the impugned proceedings of the first respondent Collector dated 9.5.2003, whereunder he had refused to exercise the power conferred under Rule 12 of the Tamil Nadu Minor Mineral Concession Rules (hereinafter referred to as the 'Rules') while considering the request made by the petitioner Sangam seeking permission to remove the silt from kanmoi on the following grounds:
(a) that the removal of the silt would be contrary to the interest of the agriculturists;
(b) that there was no increase in the capacity of the kanmoi; and
(c) if permission is granted, the licensee may destroy the trees, which have grown around kanmoi, while transporting the silt.
It is, therefore, contended that the first respondent Collector ought to have applied the same reasons in his proceedings dated 26.6.2003, while considering the request of the third respondent for granting permission for removal of the gravel.

5. Per contra, Mr.B.S. Gnanadesikan, learned counsel appearing for the third respondent distinguished the request made by the petitioner and that of the third respondent, viz. while the petitioner sought for removal of silt, the third respondent sought for removal of gravel and therefore, contends that except imposing appropriate conditions for the safety of the trees, other reasons that weighed the authorities are not attracted.

6. Mr.P. Gunaraj, learned Special Government Pleader appearing for respondents 1 and 2, contends that the respondents exercised their power under Rule 12 of the Rules, while granting permission to the third respondent, by proceedings dated 26.6.2003.

7. I have given careful consideration to the submissions of all parties.

8. Rule 12 of the Rules reads as follows:

"12. Removal of sand, etc., from lands and tanks in-charge of some departments.-
(1) The preceding Rules, however, do not govern the removal of sand, etc., from works and lands in-charge of the Public Works Department and tanks in-charge of Revenue Department.

(2) The public may be allowed to quarry free of charge for bonafide domestic or agricultural purposes sand, earth or silt from the beds of tanks under the control of the Public Works Department or Revenue Department which are notified by the Collector under this Rule without obtaining permits for quarrying provided that the dwelling place, or agricultural land of the person concerned and the quarrying:
Provided that the dwelling place, or agricultural land of the person concerned and the quarrying place shall be in the same revenue village or in the adjoining revenue village. Quarrying for other than bonafide domestic or agricultural purposes shall be subject to the previous permission being obtained from the District Collector concerned and to the payment of seigniorage fee for the quantity of the mineral sought to be removed at the rates specified from time to time in Appendix II to these Rules. Any removal of mineral from these lands shall be subject to the restrictions mentioned below:-
(i) pits shall be at a distance of atleast twice the height of the bund from the toe of the bund and they shall not be more than one metre in depth (the depth shall be less, if pits one metre deep are likely to expose porus strata);
(ii) earth shall not be carted along the tank bund unless the bund is a recognised road or cart-track;
(iii) bunds shall not be cut to enable to pass;
(iv) silt removed not to be stacked on tank beds, sluice or any other masonary works of the tanks and causeways or slopes of bunds; and
(v) carts shall not touch any portion of the revetment, sluice or any masonary works of the tanks and cause damage to them.
(3) Before issuing the notification mentioned in sub-rule (2) the Collector shall consult the Executive Engineer concerned in respect of tanks in-charge of Public Works Department.
(4) The village officer shall, every year, report to the Tahsildar or Deputy Tahsildar concerned, the tanks in-charge of both the Public Works Department and Revenue Department from which further removal of sand, earth or silt should be prohibited temporarily. They shall also send a report about the tank in-charge of the Revenue Department from which such removal may be permitted again. The Tahsildar or Deputy Tahsildar shall scrutinise the lists and submit his proposals to the Collector. On receipt of the reports from the Tahsildar or Deputy Tahsildar the Collector shall, every year, issue a revised notification if he considers the revision necessary. Extracts from the revised notification shall be sent to the Executive Engineers whenever tanks in-charge of Public Works Department are excluded from the list of tanks from which removal of sand, earth or silt had been permitted."

9. A plain reading of Rule 12 of the Rules referred to above makes it clear that before exercising the power, the Collector shall notify the tank where the permission is proposed to be granted under Rule 1 2 of the Rules with the prior consultation of the Executive Engineer, Public Works Department. When the relevant files are produced before this Court through the Special Government Pleader, it is fairly conceded that there was no such notification issued under Rule 12(2) of the Rules, without which, in my considered opinion, the permission granted in favour of the third respondent is not sustainable in law. Therefore, W.P.No.19258 of 2003 stands allowed.

10. With respect to the refusal to grant permission to the petitioner, I do not find any reason to interfere, as the grounds for such refusal appear to be rather in the larger interest and based on the opinion of the Executive Engineer, Public Works Department. However, it is made clear that if and when the Collector proposes to issue notification under Rule 12(2) of the Rules, of course, after getting prior consultation with the Public Works Department, the petitioner is also entitled to approach the Collector for permission. W.P.No.22123 of 2003 is disposed of accordingly.

In the result, W.P.No.19258 of 2003 is allowed and W.P.No.22123 of 2003 is disposed of. No costs.

Index : Yes
Internet : Yes

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To

1. The District Collector
Madurai District
Madurai.

2. The Executive Engineer
Public Works Department (RCD)
Periyar Main Canal Division
Melur Taluk, Madurai District.